

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BRANDON A. POTTS,

Petitioner,

v.

DOUGLAS GILLEPSIE, et al.

Respondents.

Case No. 2:12-cv-01339-MMD-GWF

ORDER

This action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2241. Petitioner is represented by counsel, who filed a petition for writ of habeas corpus in this Court on July 30, 2012. (Dkt. no. 1.) On September 14, 2012, petitioner filed a motion requesting this Court to stay his state court criminal trial, which is set to begin on October 1, 2012. (Dkt. no. 2.)

I. BACKGROUND

On April 14, 2011, petitioner struck a police motorcycle and the motorcycle officer who was standing nearby in the travel lane, resulting in serious injury to the officer. (Dkt. no. 1, at p. 4.) Petitioner was handcuffed and placed in the back of a police vehicle. (*Id.*) Later, a police officer removed petitioner from the police vehicle for a sobriety test and what petitioner describes as interrogation. (*Id.*, at pp. 4-5.) Petitioner contends that the “officer coerced him into answering questions and performing the field sobriety tests.” (*Id.*, at p. 5.) Petitioner alleges that he was never advised of his *Miranda* rights.¹ (*Id.*) Petitioner contends that, without his answers, there was no probable cause to arrest him

¹*Miranda v. Arizona*, 384 U.S. 436 (1966).

1 of a DUI offense. (*Id.*). Petitioner contends that his Fourth and Fifth Amendment rights
2 were violated because he was not given his *Miranda* warning before the field sobriety
3 test. Petitioner asserts that: “Field sobriety testing is ‘functionally equivalent’ to
4 statements” for the purpose of reviewing an alleged *Miranda* violation. (Dkt. no. 1, at p.
5 6, n.3.) Petitioner asserts that the evidence from the field sobriety test should be
6 suppressed because the officers failed to give him *Miranda* warnings. (*Id.*, at p. 6.)

7 On July 8, 2011, an indictment was filed in the Eighth Judicial District of Nevada,
8 in Clark County, charging petitioner with driving while under the influence of intoxicating
9 liquor causing death and/or substantial bodily harm, a felony pursuant to NRS 484C.310
10 and 484C.430. (Dkt. no. 1-1.) On April 19, 2012, the state district court entered an order
11 denying petitioner’s motion to dismiss the indictment in Case No. C-11-274646. (Dkt.
12 no. 1-2.) Petitioner filed a petition for a writ of habeas corpus with the Nevada Supreme
13 Court, arguing that the indictment should be dismissed because probable cause was
14 gained through evidence obtained during the custodial interrogation and sobriety test
15 without police first giving petitioner his *Miranda* warning. (Dkt. no. 1-3.) On June 14,
16 2012, the Nevada Supreme Court issued a written order denying the petition, finding that
17 the Court’s intervention by way of extraordinary writ was unwarranted. (Dkt. no. 1-4.)
18 Petitioner filed a motion for rehearing (dkt. no. 1-5), which the Nevada Supreme Court
19 denied by order filed July 26, 2012. (Dkt. no. 1-6.)

20 Petitioner’s counsel filed a petition for writ of habeas corpus pursuant to 28 U.S.C.
21 § 2241 with this Court on July 30, 2012. (Dkt. no. 1.) On September 14, 2012, petitioner
22 filed a motion requesting this Court to stay his state court criminal trial (Case No. C-11-
23 274646), which is set to begin on October 1, 2012. (Dkt. no. 2.)

24 **II. DISCUSSION**

25 Under principles of comity and federalism, a federal court should not interfere with
26 ongoing state criminal proceedings by granting injunctive or declaratory relief, absent
27 extraordinary circumstances. *Younger v. Harris*, 401 U.S. 37, 44 (1971); *Middlesex*
28 *County Ethics Comm’n v. Garden State Bar Ass’n*, 457 U.S. 423, 431 (1982). The

1 *Younger* abstention doctrine applies to claims raised in federal habeas corpus
2 proceedings. *Edelbacher v. Calderon*, 160 F.3d 582, 587 (9th Cir. 1998); *Sherwood v.*
3 *Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983); *Carden v. State of Montana*, 626 F.2d 82,
4 83-85 (9th Cir. 1980), *cert. denied*, 449 U.S. 1014 (1980). The *Younger* abstention
5 doctrine applies when: (1) state judicial proceedings are pending; (2) the state
6 proceedings involve important state interests; and (3) the state proceedings afford
7 adequate opportunity to raise the constitutional issue. *Middlesex County Ethics Comm'n*
8 *v. Garden State Bar Ass'n*, 457 U.S. at 432; *Dubinka v. Judges of the Superior Court*, 23
9 F.3d 218, 223 (9th Cir. 1994). There are three exceptions to the *Younger* abstention
10 doctrine: (1) when there is evidence of state proceedings motivated by bad faith; (2)
11 when irreparable injury would occur; or (3) when there was no adequate alternative state
12 forum where the constitutional issues can be raised. *Younger*, 410 U.S. at 43. A narrow
13 exception to the abstention doctrine exists where a pending state prosecution violates
14 the Double Jeopardy Clause, as this presents circumstances allowing for federal review
15 while state criminal proceedings are ongoing. See, e.g., *Mannes v. Gillespie*, 967 F.2d
16 1310, 1312 (9th Cir. 1992). Otherwise, only in cases of proven harassment or
17 prosecutions undertaken by state officials in bad faith without hope of obtaining a valid
18 conviction, and perhaps in other special circumstances where irreparable injury can be
19 shown, is federal injunctive relief against pending state prosecutions appropriate.
20 *Carden v. Montana*, 626 F.2d 82, 83-84 (citing *Perez v. Ledesma*, 401 U.S. 82, 85
21 (1971)).

22 In the instant case, all prerequisites to the *Younger* abstention doctrine are
23 present. First, petitioner is currently the subject of a criminal proceeding in state court,
24 which is ongoing and has not reached final adjudication. Second, the State of Nevada
25 has an important interest in protecting the public through the prosecution of criminal
26 proceedings. Third, the state court criminal proceedings afford an opportunity for
27 petitioner to raise the constitutional claim asserted in the federal habeas petition. In fact,
28 the same issues asserted in the federal petition were presented to the state courts and

1 denied. (Dkt. nos. 1-2, 1-3, 1-4, and 1-6.) To the extent that petitioner claims that the
2 Nevada state courts wrongly denied his motion to dismiss the indictment and his pretrial
3 habeas petition, there is nothing that requires this federal court to conduct a pre-
4 conviction habeas review to cure state law procedural defects. Finally, petitioner has not
5 demonstrated any extraordinary circumstance why this Court should not abstain from
6 entertaining the petition. Petitioner has not alleged or demonstrated that the pending
7 state criminal charges against him are motivated by bad faith, that irreparable injury will
8 occur, or that there is no adequate alternative state forum where the constitutional issues
9 can be raised. For the reasons discussed above, the federal habeas petition is
10 dismissed without prejudice to filing a future federal habeas petition once petitioner's
11 state criminal trial and all state appeals concerning the criminal trial have concluded.
12 Further, petitioner's motion to stay his criminal trial in state court is denied.

13 **III. CERTIFICATE OF APPEALABILITY**

14 In order to proceed with his appeal, petitioner must receive a certificate of
15 appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v.*
16 *Ornoski*, 435 F.3d 946, 950-951 (9th Cir. 2006); *see also United States v. Mikels*, 236
17 F.3d 550, 551-52 (9th Cir. 2001). Pretrial petitioners require a certificate of appealability
18 prior to appealing a denial of relief under 28 U.S.C. § 2241. *See Wilson v. Belleque*, 554
19 F.3d 816, 825 (9th Cir. 2009). Generally, a petitioner must make "a substantial showing
20 of the denial of a constitutional right" to warrant a certificate of appealability. *Id.*; 28
21 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). "The petitioner
22 must demonstrate that reasonable jurists would find the district court's assessment of the
23 constitutional claims debatable or wrong." *Id.* (*quoting Slack*, 529 U.S. at 484). In order
24 to meet this threshold inquiry, the petitioner has the burden of demonstrating that the
25 issues are debatable among jurists of reason; that a court could resolve the issues
26 differently; or that the questions are adequate to deserve encouragement to proceed
27 further. *Id.*

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District courts are required to rule on the certificate of appealability in the order disposing of a proceeding adversely to the petitioner or movant, rather than waiting for a notice of appeal and request for certificate of appealability to be filed. Rule 11(a). This Court has considered the issues raised by petitioner in the petition and in the motion for a stay of the state criminal trial, with respect to whether they satisfy the standard for issuance of a certificate of appealability, and determines that none meet that standard. The Court therefore denies petitioner a certificate of appealability.

IV. CONCLUSION


IT IS THEREFORE ORDERED that the petition for a writ of habeas corpus (dkt. no. 1) is DENIED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that petitioner's motion requesting a stay of his state criminal trial, in Case No. C-11-274646, set to begin on October 1, 2012 (dkt. no. 2), is DENIED.

IT IS FURTHER ORDERED that petitioner is DENIED a certificate of appealability.

IT IS FURTHER ORDERED that the Clerk of Court SHALL ENTER JUDGMENT ACCORDINGLY.

DATED THIS 20th day of September 2012.


UNITED STATES DISTRICT JUDGE